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16 *Attorneys for Plaintiff Epic Games, Inc.*

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN FRANCISCO DIVISION**

20 **IN RE GOOGLE PLAY STORE**  
21 **ANTITRUST LITIGATION**

22 THIS DOCUMENT RELATES TO:

23 *Epic Games, Inc. v. Google LLC et al.*,  
24 Case No. 3:20-cv-05671-JD

Case No. 3:20-cv-05671-JD  
Case No. 3:21-md-02981-JD

25 **DECLARATION OF SHAWN**  
26 **GRUNBERGER IN SUPPORT OF**  
27 **PLAINTIFF EPIC GAMES, INC.'S**  
28 **MOTION FOR A PRELIMINARY**  
**INJUNCTION**

Date: June 2, 2022 at 10:00 a.m  
Courtroom: 11, 19th Floor  
Judge: Hon. James Donato

1 I, Shawn Grunberger, declare as follows:

2 1. I am the co-founder of Bandcamp, and now serve as Director of Technology. In  
3 March 2022, I became an employee of Epic Games Inc. (“Epic”) after Bandcamp was acquired  
4 by Epic. I submit this declaration in support of Epic’s Motion for a Preliminary Injunction. The  
5 contents of this declaration are based on my personal knowledge. If called as a witness, I could  
6 and would competently testify thereto.

7 2. In 2008, I co-founded Bandcamp, an online record store and music community,  
8 with Ethan Diamond, Joe Holt, and Neal Tucker. I worked as Chief Technology Officer and  
9 head of engineering at Bandcamp for fourteen years, and I am currently the Director of  
10 Technology. In these roles, I have overseen the technical operations side of the business,  
11 including the design and coding of our website, the development of our mobile apps, and the  
12 design, management and engineering of our payment system.

13 **Bandcamp’s Payment System**

14 3. Since co-founding Bandcamp, I have overseen the engineering efforts to design,  
15 code, build and update Bandcamp’s payment system. Our payment system is a critical piece of  
16 infrastructure that drives Bandcamp’s entire business. We custom built our payment system,  
17 which integrates PayPal technology, to suit the specific needs of our business and the artists,  
18 labels, and fans who use Bandcamp. The team of engineers that designed our system included  
19 ten engineers and three designers, and the system took several years to build. Specifically, we  
20 designed software that ensures that when a fan buys digital music (and many physical items) on  
21 Bandcamp, the fan’s money is routed to Bandcamp, and Bandcamp is able to pay the right  
22 amount to the right artist as quickly as possible. Today, we have a core team of five payment  
23 engineers, one designer and one product manager that maintains and updates our payment  
24 system.

25 4. In the past year alone, we have relied on our payment system to process  
26 transactions for 14.9 million digital albums, 7.2 million tracks, 1.9 million vinyl records,  
27 869,000 CDs, 475,000 cassettes, and 295,000 t-shirts, totaling \$199 million in spend.  
28

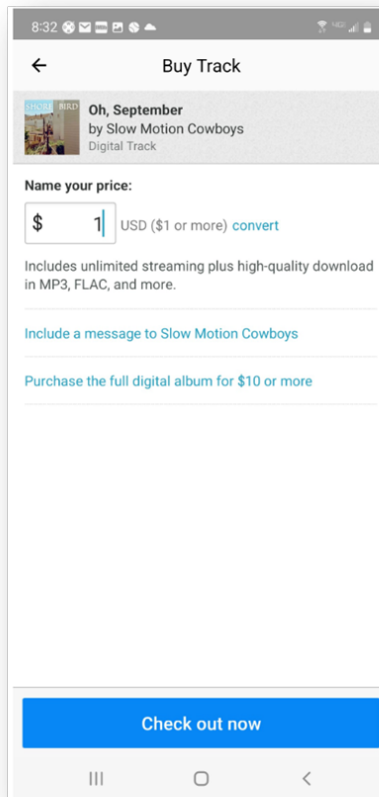
1           5.       Before I explain the details and benefits of our payment system, I would like to  
2 briefly summarize how the system works at a high level. Our payment system is two-sided,  
3 meaning that we process payments from fans and send payouts to artists and labels. This process  
4 is fully integrated with PayPal such that regardless of how a user pays for their purchase and  
5 regardless of what countries the buyers or sellers are in, the money from the sale is deposited into  
6 one of Bandcamp's PayPal accounts and is then sent via PayPal to the artist's PayPal account,  
7 usually within 24 to 48 hours of the sale.

8           6.       We have spent years building and refining our software and processes on the  
9 back-end to create a seamless user-facing experience. There are many benefits to the way we  
10 have designed our payment system that would be lost if we were forced to switch to using  
11 Google Play Billing.

12       **Bandcamp's Pricing Features**

13           7.       Our payment system allows artists and labels to list and edit their digital music for  
14 sale and gives them full control over pricing. Specifically, when artists list a product for sale on  
15 the Bandcamp app, including a digital song or album, they are able to set the price of that  
16 product. In addition, they can set the price of the item in the currency of their choice.

8. Artists can also elect to use a feature known as “Name-Your-Price” by going to their album page, clicking “edit,” and choosing “let fans pay more if they want.” This allows users to pay what they want for the product, sending extra money to the artist as they see fit, as shown below. Artists using the Name-Your-Price feature can specify a minimum amount that the user must pay for the product. This can optionally be zero, which allows artists to share free, legal downloads of their music with fans if they choose to do so.



1           9.       The primary purpose of the Name-Your-Price feature is to allow engaged fans to  
2 send more support to the artists they love, to help them create more music. In addition, the  
3 Name-Your-Price feature can be used for fundraising efforts. For example, the artist Skee Mask  
4 recently released an album on Bandcamp using the Name-Your-Price feature, with all earnings  
5 donated to certain humanitarian relief organizations that provide support to Ukraine. There,  
6 users could purchase the album for, say, \$100 in order to contribute to those relief organizations.

7           10.      On average, there are 13,000 new digital items added for sale to Bandcamp every  
8 day.

9           11.      Approximately 98% of those items have the Name-Your-Price feature enabled by  
10 the artist or label.

11           12.      Name-Your-Price has proven very successful with respect to purchases of both  
12 digital and physical goods. Buyers who choose to pay more give an average of 50% above the  
13 minimum price.

#### 14 **PayPal Integration**

15           13.      Our payment system is fully integrated with PayPal to facilitate both sides of  
16 Bandcamp transactions, beginning with the initial sale.

17           14.      The Bandcamp app accepts two forms of payment: PayPal and credit cards.

18           15.      If the user chooses to pay using PayPal, the Bandcamp server initiates an  
19 interaction with the PayPal server using a PayPal checkout Application Program Interface  
20 (“API”). At that point, the user will be directed to PayPal’s native website checkout flow within  
21 a web view in the Bandcamp app. They can then complete the purchase through PayPal using  
22 the method of their choice—*i.e.*, via the user’s PayPal balance, credit card, or linked bank  
23 account. Once the user clicks “Complete Purchase” within PayPal, the PayPal server alerts the  
24 Bandcamp server to complete the transaction and provides Bandcamp with certain information,  
25 including the buyer’s email address, through a series of API calls between the servers. The user  
26 is then redirected to a post-purchase confirmation screen within the Bandcamp app.

1           16. If the user chooses to pay using a credit card within the Bandcamp app, they are  
2 presented with a screen to enter their credit card information, name, and zip code. Alternatively,  
3 if the user has previously purchased products within the Bandcamp app using a credit card, the  
4 app allows them to save their credit card information by clicking “Remember my card”; if a user  
5 has done so, they do not need to re-enter their credit card information during subsequent  
6 purchases. The user can then complete their purchase within the Bandcamp app.

7           17. One of the critical design features in our payment system is that regardless of  
8 whether a user pays for a digital product using PayPal or a credit card within the Bandcamp app,  
9 the money from the sale is deposited in the same place. Specifically, when a user uses PayPal to  
10 purchase a digital good within the Bandcamp app, the money from the sale is deposited into one  
11 of Bandcamp’s PayPal accounts. In addition, we have intentionally implemented the Bandcamp  
12 app’s support for credit cards using PayPal APIs, such that even if a user chooses to pay for a  
13 digital good using a credit card within the Bandcamp app, the money is also deposited into one  
14 of Bandcamp’s PayPal accounts.<sup>1</sup> Because we also send payouts to artists via PayPal, this  
15 minimizes our transaction costs and allows us to cover our payout liabilities without having to  
16 move funds manually between accounts.

### 17 **Currency Exchange Costs**

18           18. By fully integrating our payment system with PayPal, we are also able to  
19 minimize our currency exchange fees. When PayPal deposits the funds from transactions—  
20 either PayPal transactions or credit card transactions within the Bandcamp app—into  
21 Bandcamp’s PayPal account, it does so in the currency of the sale, which is chosen by the artist.  
22 For example, if an artist sets the price of a digital album as £10, the money from the transaction  
23 will be deposited into Bandcamp’s PayPal account as £10 (rather than in U.S. dollars), which  
24 allows Bandcamp (and the artist) to avoid paying currency exchange fees both when receiving  
25 and paying out the money from the sale.

26 \_\_\_\_\_  
27 <sup>1</sup> Bandcamp has multiple PayPal accounts to accommodate micro-transactions (*i.e.*,  
28 transactions under \$8.07) and macro-transactions (*i.e.*, transactions over \$8.07). This is because,  
as explained below, these transactions are subject to different transaction fees.

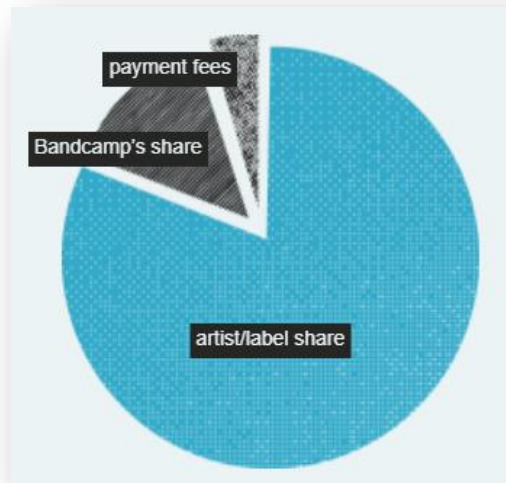
1           19. This is a unique feature of our payment system, which we have designed very  
2 intentionally. In fact, since originally designing our payment system, we have considered  
3 incorporating other payment methods such as Stripe, but have purposely decided against doing  
4 so because other services would deposit all transactions into our account in U.S. dollars. This  
5 means that to the extent the artist listed the item and the user purchased the item in a non-U.S.  
6 currency, we would be forced to pay currency exchange fees both when receiving payment from  
7 the user and paying out the artist. Alternatively, we could have set up Stripe accounts in other  
8 countries to circumvent this issue, but that would have required us to invest the significant time  
9 and expense needed to establish legal entities in those other countries, which was not feasible for  
10 our company.

11           20. Likewise, integrating Google Play Billing would require us to deal with the  
12 complication and expense of currency exchanges, and potentially the risk of fluctuating  
13 exchange rates leading to losses, which we have intentionally avoided throughout Bandcamp's  
14 history.

15 **Revenue Shares and Fees**

16           21. Once the money from the sale is deposited into Bandcamp's PayPal account, our  
17 custom-built accounting system automatically determines how much revenue from the sale to  
18 reserve for the artist after accounting for sales tax, the Bandcamp revenue share, and payment  
19 processing fees. With respect to purchases of digital goods, we receive a 15% revenue share,  
20 which drops to 10% once an artist exceeds \$5,000 in sales.  
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22. In addition to the Bandcamp revenue share, payment processor fees apply to all transactions for digital goods.<sup>2</sup> For transactions greater than or equal to \$8.07, the transaction fee is 1.9% + \$0.30 when a user pays using PayPal, and 2.2% + \$0.30 when a user pays with a credit card. For smaller transactions (under \$8.07), we minimize the fee by automatically switching to PayPal's alternative rate of 5% + \$0.05. In addition, when we send payouts to artists' PayPal accounts, PayPal's payout fee is 1% of the total payout amount. Transaction and payout fees can vary depending on geographic location or payment method. On average, after accounting for Bandcamp's revenue share and payment processing fees, artists earn 82% of the revenue from each sale.



<sup>2</sup> A true and correct copy of Bandcamp's web page titled "How much are payment processor fees for digital sales?," available at <https://get.bandcamp.help/hc/en-us/articles/360007802394-How-much-are-payment-processor-fees-for-digital-sales->, is attached as Exhibit A.

## **Payout Times**

23. Once the artist's share is determined, we typically pay artists within 24 to 48 hours of a sale, a fact that we prominently feature on our website.<sup>3</sup>

24. To do this, the Bandcamp server initiates an API call to the PayPal server using PayPal's Mass Pay feature,<sup>4</sup> which allows us to send payments to an artist's PayPal account using only the artist's email address. PayPal then completes the transaction and delivers the payments to the artist's PayPal account almost instantly. In the event that an artist does not have a PayPal account set up, PayPal emails the artist that they have received a payment and prompts them to finish setting up their PayPal account in order to receive it.

25. Unlike Bandcamp's existing payment system, Google Play Billing is one-sided, meaning it is only designed to pay out developers. It does not have a solution to pay out hundreds of thousands of sellers over the course of a year. Therefore, it would be our responsibility to send payouts to artists using a different payment system, which would require significant, additional effort to implement and maintain.

26. Paying artists within 24 to 48 hours is possible because of the Bandcamp app's custom-built, two-sided payment system that allows us to process sales and send payouts to artists all within PayPal. Our specialized and centralized payment system gives us the capability to pay hundreds of thousands of artists per year quickly and efficiently.

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<sup>3</sup> A true and correct copy of Bandcamp's web page titled "How do I get paid on Bandcamp, and how often?," available at <https://get.bandcamp.help/hc/en-us/articles/360007902213-How-do-I-get-paid-on-Bandcamp-and-how-often-#:~:text=Payments%20for%20digital%20items%20are,along%20with%20payment%20process%20fees>, is attached as Exhibit B. Note that higher-value purchases, like a track that sells for \$500, are manually reviewed and may take up to 14 days. In addition, Bandcamp's ability to remit payments to artists depends on artists setting up their PayPal accounts successfully.

<sup>4</sup> PayPal's mass pay option, now called Payouts, is a streamlined solution for managing mass payments, allowing an account holder to easily send money to multiple people at the same time, and the recipient to receive the funds in their PayPal account. This feature allows Bandcamp to automatically send thousands of payments at once. A true and correct copy of PayPal's web page titled "Send multiple payments with Payouts: the PayPal mass pay option," available at <https://www.paypal.com/us/brc/article/paypal-mass-payments#:~:text=The%20PayPal%20mass%20pay%20option%2C%20Payouts%2C%20is%20one%20such%20solution,funds%20in%20their%20PayPal%20account>, is attached as Exhibit C.

27. If the Bandcamp app were required to use Google Play Billing, it would materially affect our process for paying artists. Orders processed using Google Play Billing in any given month are paid out to developers on the 15th of the following month, meaning that it could take up to 45 days for Bandcamp to receive payment from Google.<sup>5</sup> This delay in payment to Bandcamp in turn would significantly delay payments to artists and remove a key selling point for artists to use Bandcamp. To maintain our commitment to pay artists within 24 to 48 hours of each digital sale, we would need to use money from our own funds to send payouts to artists.

### **Multiple Payment Systems**

28. Google's payments policy seeks to require that all developers selling digital goods and services in their apps are required to use Google Play's billing system. But Google's payments policy also states that "Google Play's billing system must not be used" in cases where payment is primarily for the purchase of physical goods.<sup>6</sup> Bandcamp allows artists to sell physical goods (like CDs, records and merchandise), as well as digital goods. Therefore, switching to using Google Play Billing for digital purchases would force artists to deal with two different payment systems—Bandcamp's payment system for physical goods and Google's payment system for digital goods. Thus, artists would continue to be paid out within 24 to 48 hours for sales of physical goods but would be forced to wait 15 to 45 days for sales of digital goods (absent Bandcamp using their own funds to pay out artists for digital goods on the same schedule as physical goods), causing confusion among artists dealing with different payment schedules.

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<sup>5</sup> A true and correct copy of Google's web page titled "Order processing and payouts," available at <https://support.google.com/googleplay/android-developer/answer/137997?hl=en#:~:text=Any%20orders%20processed%2C%20refunded%2C%20or,bank%20to%20credit%20your%20account>, is attached as Exhibit D.

<sup>6</sup> A true and correct copy of Google's Payments Policy, available at [https://support.google.com/googleplay/android-developer/answer/9858738?visit\\_id=637865915491541784-284493530&rd=1](https://support.google.com/googleplay/android-developer/answer/9858738?visit_id=637865915491541784-284493530&rd=1), is attached as Exhibit E.

## **Customer Support**

29. We have put significant engineering resources into integrating our in-house customer support tools with PayPal. This allows our support team to offer quality customer support throughout the lifecycle of a payment without leaving our custom-built tools, which saves us significant time. I expect that integrating Google Play Billing would require us to expend time and resources building a new infrastructure in order to offer the same level of quality customer support through Google Play Billing.

## **Itemized Pricing**

30. While Bandcamp allows artists full control over pricing, Google requires developers using Google Play Billing for digital purchases in their app to create a pricing schedule for each digital item available for purchase in the app.<sup>7</sup> Google then lists the range of prices of in-app products available in an app in the Play Store. For example, the description of the PDF Scanner – PDF Converter app on the Play Store states that the app features in-app purchases ranging from \$1.99 to \$47.99 per item.

31. In practice, this means that Bandcamp would be required to provide Google with itemized catalogs for every digital item available for purchase within the Bandcamp app—today, that is around 6.9 million albums and 29 million individual tracks.

32. To do this, developers have three options: (1) use Google’s Play Console to enter product details about each individual in-app product they wish to sell, including product ID, title, description, icon, and price; (2) upload a CSV file that includes these details about multiple in-app products; or (3) use Google’s API for adding and updating in-app products.

33. The first two options are unworkable given the number of new digital items added for sale on Bandcamp every day, and the fact that artists can choose to modify their prices at any time. Even the third option—using Google’s API for adding and updating in-app products—would require us to build an automated system that keeps Google’s catalog in sync with ours.

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<sup>7</sup> A true and correct copy of Google’s web page titled “Create an in-app product,” available at <https://support.google.com/googleplay/android-developer/answer/1153481?hl=en>, is attached as Exhibit F.

1 This would be a significant challenge for our current marketplace with tens of millions of digital  
2 items.

3 34. This is further complicated by the fact that artists are currently able to set prices in  
4 the currency of their choice, and that users often pay more than the price set by artists.

5 35. We have spent significant time and resources building the Bandcamp app's  
6 payment system to support our business and our community, including on Android, where we  
7 have used our payment system without issue for six years. Google Play Billing, on the other  
8 hand, is a poor match for many of our important business needs, and it would therefore impair  
9 the quality and character of our service.

10 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
11 and correct and that I executed this declaration on April 28, 2022, in Santa Cruz, California.

12  
13 *Shawn Grunberger*

14 

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Shawn Grunberger